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10/579,240	07/10/2006	Thomas Richard Vitton	0595-1070	7821
<div>466                      7590                      12/06/2010</div> <div>YOUNG &amp; THOMPSON</div> <div>209 Madison Street</div> <div>Suite 500</div> <div>Alexandria, VA 22314</div>				
EXAMINER				
PANI, JOHN				
ART UNIT		PAPER NUMBER		
3736				
NOTIFICATION DATE		DELIVERY MODE		
12/06/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

### Office Action Summary

**Application No.**

10/579,240

**Applicant(s)**

RICHARD VITTON, THOMAS

**Examiner**

JOHN PANI

**Art Unit**

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 September 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 9, 11-20, 23, 24, 27 and 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 9, 11-20, 23, 24, 27 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 19, 11-20, 23, 24, 27, and 28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.
3. Claim 1, lines 33-37 require "said first and second mechanical abutments being configured for performing adjustable stopping of the primary arc and second arc respectively, at a plurality of predetermined locations relative to said single rear stationary column and said primary arc respectively". However, the original disclosure does not appear to support that the first and second mechanical abutments are adjustable in a manner that allows adjustable stopping of the primary and second arc at a plurality of predetermined positions. Rather, it appears that first and second locking means fulfill this function (see, e.g. pg. 10 line 14 - pg. 11 line 4, which differentiates between the braking means/abutment and the locking means).
4. Claim 27 requires "wherein rotation of the secondary arc about the second axis excludes positioning of the person to face the primary arc." The original disclosure does

not include this terminology or provide sufficient disclosure that this would be an inherent feature of the device as originally described. In fact, the original disclosure appears to support the ability of the device to allow positioning of the person to face the primary arc (see Fig. 1, note that if B23 were to contact abutment B2 to brake the second arc, as described on pg. 12 lines 4-11, the person would face the primary arc).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 9, 11, 12, 17, 18, 27, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 4,402,500 to Coles ("Coles") in view of US Pat. No. 5,052,754 to Chinomi and US Pat. No. 5,792,031 to Alton ("Alton").

7. In reference to Claims 1 and 17

8. Coles discloses a medical examination chair (10) for seating and moving a patient in three substantially perpendicular planes over a large amplitude (note that the term "medical examination" has been interpreted as a statement of intended use, and that the device of Coles could be used for medical examination) said medical examination chair comprising: a floor stand (11, 14); a single rear stationary column (12; note that 12 could be interpreted as rear if one were to consider 13 the front of the device, and it is the only support column in this position) on the floor stand; an open

access primary arc (angular extent of 15 extending up and down from 20 but stopping prior to the portions of 15 contacting the attachment point of 23 to 15) connected to said stationary column; a horizontal shaft (16) extending along a first direction between said primary arc and said single rear stationary column, said horizontal shaft constitutes a first axis of rotation of the primary arc about said single rear stationary column; a second axis of rotation (axis through 31, e.g.) extending along a second direction different from said first direction and disposed entirely in front of said primary arc with respect to a person seated in the examination chair (note that because 23 can rotate, depending on use this axis is in front of at least part of 15, such as when 23 rotates such that the chair faces 13), said second axis of rotation is substantially perpendicular to the first axis of rotation and passes through first (bottom section of 15 connecting 15 to 23) and second ends (top section of 15 connecting 15 to 23) that extend from said primary arc along said first direction; an open access secondary arc (one of 25, 26, 27, etc.) that is in front of said primary arc and that includes a seat (33) thereon having patient restraining means to restrain arms (see handles attached to 24 and 27) and lower limbs (strap on seat could be used to restrain at least thighs) of the person in the seat, said secondary arc is arranged inside said primary arc (Fig. 1), said secondary arc is secured via a third end and a fourth end to said first end and said second end (see Figs 3 and 8), respectively via an upper shaft (31) and a bottom shaft (32), said primary arc and secondary arc being configured for performing non-motorized rotary movement about said first axis of rotation and said second axis of rotation respectively (see col. 3 lines 1-15); and a brake (48 and 45; 40 and 38) that suddenly stops said non-motorized

rotary movement (col. 4 lines 26-55), said brake including at least a first mechanical abutment (38 and 37) that suddenly stops said primary arc relative to said single rear stationary column and a second mechanical abutment (48 and 45) for suddenly stopping said secondary arc relative to said primary arc, said first and second mechanical abutments being configured for performing adjustable stopping of the primary arc and secondary arc respectively, at a plurality of predetermined locations relative to said single rear stationary column and said primary arc respectively (depending on when the brake is applied), wherein said primary arc includes a convex portion (the exterior of 15 is convex) and is connected to said horizontal shaft via a middle of the convex portion (see Fig. 1).

9. However, Coles does not explicitly disclose means to restrain shoulders and head of the person in the seat. Chinomi teaches a vehicle head rest in which the device is tiltable and adjustable in translation vertically and horizontally (see Figs. 1-9 and col. 2-5) for increased comfort. It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Coles by including a headrest that was tiltable and adjustable in translation vertically and horizontally in order to increase user comfort as taught by Chinomi. The headrest could be used to restrain the head.

10. Alton discloses a device similar to Coles and including shoulder straps (20) to restrain the user (see col. 5 lines 25-45). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Coles by including shoulder straps to secure the patient in his seat as disclosed by Alton.

11. In reference to Claim 9

Coles in view of Chinomi and Alton discloses the medical examination chair of claim 1 (see above) and Coles discloses wherein the first mechanical abutment (38, 40) is on one lateral side of said stationary column and provided with a ring (38) and a damper (40 could act as a shock absorber), said ring cooperating with a tooth (37) of catch means arranged on the primary arc (see Fig. 7).

In reference to Claim 11

Coles in view of Chinomi and Alton discloses the medical examination chair of claim 1 (see above) and Coles discloses wherein said second mechanical abutment has at least one hook (48) and at least one damper (see pads on 48) arranged on the first end of the primary arc, said hook co-operating with stop means (45) disposed on the third end of the secondary arc.

In reference to Claim 12

Coles in view of Chinomi and Alton discloses the medical examination chair of claim 11 (see above) and Coles discloses wherein said stop means is retractable (via 46).

In reference to Claim 18

Coles in view of Chinomi and Alton discloses the medical examination chair of claim 11 (see above) and Coles discloses including patient restraining means (see Fig. 1, includes a seat belt).

In reference to Claim 27

Coles in view of Chinomi and Alton discloses the medical examination chair of claim 1 (see above) and Coles discloses wherein rotation of the secondary arc about the second axis excludes positioning of the person to face the primary arc (if for example, 48 were clamped down while in position shown in Fig. 1).

In reference to Claim 28

Coles in view of Chinomi and Alton discloses the medical examination chair of claim 11 (see above) and Coles discloses further comprising at least one rod (34) secured between the third and fourth ends of said open access secondary arc and carrying said seat.

12. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coles in view of Chinomi and Alton as applied to claim 1 above, and further in view of US Pat. No. 3,774,963 to Lowe ("Lowe").

Coles in view of Chinomi and Alton discloses the medical examination chair of claim 1 (see above) but does not explicitly teach that the seat position can be adjusted along the second axis of rotation. Lowe teaches a vehicle seat in which the seat height can be adjusted to allow the seat to conform to various users (col. 3-4). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Coles in view of Chinomi and Alton by making the seat height adjustable so the device could conform to multiple users as taught by Lowe.



13. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coles in view of Chinomi and Alton as applied to claim 1 above, and further in view of US Pat. No. 3,343,875 to Ferrara ("Ferrara").

Coles in view of Chinomi and Alton discloses the medical examination chair of claim 1 (see above) but does not explicitly teach that the seat back is adjustable in translation along said second axis of rotation. Ferrara teaches a vehicle seat in which the seat back can be adjusted in a vertical direction to allow it to conform to multiple users (col. 2-3). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Coles in view of Chinomi and Alton by making the seat back height adjustable so the device could be used by people of various sizes as taught by Ferrara.

14. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coles in view of Chinomi and Alton as applied to claim 1 above, and further in view of US Pat. No. 6,264,278 to Weimer et al. ("Weimer").

Coles in view of Chinomi and Alton discloses the medical examination chair of claim 1 (see above) but does not explicitly teach an adjustable foot rest. Weimer teaches a vehicle seat with a foot rest that is adjustable in height and angle (col. 3-4) so the device can be comfortably used by people of varying sizes. The foot rest increases circulation to the feet compared to letting the feet dangle. It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the device of Coles in view of Chinomi and Alton by including an footrest adjustable in

height and angle so the user would have increased circulation compared with unsupported feet, and so the device could be conformed to various sized users as taught by Weimer.

15. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6,800,062 to Epley ("Epley") in view of Coles as modified by Chinomi and Alton and applied to claim 1 above.

Epley teaches a medical examination chair (see Figs. 2-3 and at least col. 10 lines 9-30) which is rotatable about a horizontal axis and vertical axis. Epley does not explicitly detail the structure of the chair portion but notes that other designs which can allow rotation of the user about axes could be used. Coles in view of Chinomi and Alton discloses the medical examination chair of claim 1 (see above). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the medical examination chair of Epley by making it with the arcs and columns in a configuration such as that taught by Coles in view of Chinomi and Alton, as this simple substitution of one device design for another would predictably result in orienting a user about multiple axes as taught by both Epley and Coles. Epley teaches a control and management member (20).

16. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coles in view of Chinomi and Alton as applied to claim 1 above, and further in view of US Pat. No. 5,046,721 to Altare ("Altare").

In reference to Claim 19

Coles in view of Chinomi and Alton discloses the medical examination chair of claim 1 (see above) but does not explicitly disclose a first lock that locks the primary arc relative to the stationary column. Altare discloses a gyroscope which includes a first lock (85) which locks the primary arc (13) relative to a stationary column (30) so that the arcs do not move during loading, etc. (see col. 4 lines 38-54). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Coles in view of Chinomi and Alton by including a lock to lock the primary arc to the column in order to prevent unwanted relative motion during loading, etc. as disclosed by Altare.

In reference to Claim 20

Coles in view of Chinomi and Alton discloses the medical examination chair of claim 1 (see above) but does not explicitly disclose a second lock that locks the secondary arc in a plurality of positions relative to the primary arc. Altare discloses a gyroscope which includes a second lock (200) that locks the secondary arc (180) in a plurality of positions (note 210 and 212) relative to the primary arc to assist in a user getting in and out of the device (see col. 6 lines 18-35). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified Coles in view of Chinomi and Alton by including a similar locking mechanism in order to increase safety during a user getting in and out of the device as taught by Coles.

***Response to Arguments***

17. Applicant's arguments, see pg. 7 ("Claim Objection") of Remarks, filed 9/30/2010, with respect to claim 1 have been fully considered and are persuasive. The objection of 7/1/2010 has been withdrawn.

18. Applicant's arguments, see pgs. 7-8 ("Claim Rejections Under 35 U.S.C. §112") of Remarks, filed 9/30/2010, with respect to claim 1 have been fully considered and are persuasive. The rejection of claim 1 under 35 U.S.C. 112, second paragraph of 7/1/2010 has been withdrawn.

19. Applicant's arguments, see pgs. 8-9 ("Claim Rejections Under 35 U.S.C. §112") of Remarks, filed 9/30/2010, with respect to claim 1 have been fully considered and are persuasive. The rejection of claim 1 under 35 U.S.C. 112, first paragraph for written description and enablement regarding the second axis being completely in front of the second arc and extending through the ends of the arc of 7/1/2010 has been withdrawn.

20. Applicant's arguments filed 9/30/2010 have been fully considered but they are not persuasive. In response to Applicant's assertion (pg. 9) that "at least paragraph [0037] provides support for such claimed features" as "said first and second mechanical abutments . . . and said primary arc, respectively", the Examiner respectfully disagrees, and reiterates that the features as claimed are directed to the abutments but the disclosure refers to "locking means" which the disclosure clearly indicates are separate structures.

21. In response to Applicant's arguments (pg. 12) that "Coles explicitly discloses that the ring 15 is indirectly connected to the stub shaft 16 using a claim-type fixture 20. As

such, Applicant respectfully asserts that the configuration of the device of Coles cannot anticipate the combination of features recited by amended independent claim 1", the Examiner respectfully disagrees, as the claim does not require the shaft directly contacts the convex portion of the arc.

22. In response to Applicant's arguments that "the present invention has attained significant international success by notable distinguished professionals and organizations within the medical field", the text found in pgs. 13-15 has been fully considered, but because it is not in the form of an affidavit/declaration it is viewed as an argument, and has been given minimal weight and not found sufficient to overcome the outstanding determination that the claims are *prima facie* obvious (see MPEP 716.01(c)). Additionally, the arguments provided do not appear to establish a nexus between the claimed invention and alleged commercial success (see MPEP 716.03). For example, regarding claim 1, the only difference between the claimed invention and the prior art is head and shoulder restraints. The "testimonies" do not explicitly discuss how this difference results in, for example, Dr. Kothari's preference of the applicant's invention over the "COMPETITOR", or even what the "COMPETITOR" is. Dr. Kothari is the only "testimon[y]" provided that discusses reasons for preference (i.e. "your chair will be easier, simpler, faster and best of all, there is no software or electronics hardware to get spoiled"). It appears the claimed feature most capable of providing these features would be that the "primary arc and secondary arc are configured for performing non-motorized rotary movement". Epley contemplates (col. 7 lines 47-50) "direct hand manipulation" as an alternative to "a hand-operable control device such as

a joystick" or "more automated computer control". This strongly suggests a non-motorized device. Thus the Examiner maintains that the device as claimed is *prima facie* obvious.

23. Applicant's remaining arguments with respect to claims 1, 9, 11-20, 23, 24, 27, and 28 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

24. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN PANI whose telephone number is (571)270-1996. The examiner can normally be reached on Monday-Friday 7:30 am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JP/ 11/30/10

/Max Hindenburg/  
Supervisory Patent Examiner, Art Unit 3736